

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

ORDER

18-CR 609 (HG)

ALFRED LOPEZ,
HIMEN ROSS,
ANTHONY ZOTTOLA, SR.,

Defendants.

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GONZALEZ, District Judge

Non-party Jerry Capeci of Gang Land News moves to unseal an exhibit introduced by the government during trial on September 13, 2022. The Court previously granted the government's oral motion to seal the exhibit. See Trial Tr. at 3079:8. The present motion, ECF No. 495, is accordingly denied. The Court briefly delineates its reasoning below.

"Documents may be sealed only if specific, on the record findings are made demonstrating that closure is essential to preserve higher values[.]" Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 120 (2d Cir. 2006) (cleaned up). Included among these "higher values" is the safety of parties and witnesses. See Tehrani v. Town of Oyster Bay Hous. Auth., 18-cv-2450, 2019 WL 1559425, at *5 (E.D.N.Y. Apr. 10, 2019); see also United States v. Berganza, 03-cr-987, 2005 WL 372045, at *4 (S.D.N.Y. Feb. 16, 2005) (denying motion to unseal indictment where its disclosure could threaten the safety of informants).

The document in question, Government Exhibit 11, is a photograph of a cooperating witness who recently testified at trial. In its motion to seal the exhibit, the government explained that the witness faces significant and imminent safety concerns. Trial Tr. at 3078:20–3079:5. Indeed, one of the defendants in this case allegedly threatened the witness on the first day of his trial testimony. Id. The considerable media coverage of this case—and the fact that the present

motion was filed by a member of the media who will presumably publish this photograph to the public if unsealed—only intensifies these safety concerns. And while the petitioner presents an order from Chief Judge Brodie unsealing a photograph of a cooperating witness, her ruling makes no mention of any imminent safety concerns for the witness. The Court finds that the substantial safety concerns identified on the record outweigh the presumption of public access.

SO ORDERED.

Dated: Brooklyn, New York
September 21, 2022

/s/ Hector Gonzalez
HECTOR GONZALEZ
United States District Judge